

Headquarters  
U.S. Army Armor Center and Fort Knox  
Fort Knox, Kentucky 40121-5000  
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## Procurement

### CONTRACTING

**Summary.** This regulation provides procedural instructions for use by designated activities in submitting purchase requests to the Directorate of Contracting (DOC) for acquisition of required supplies, services, and construction which have been authorized to be obtained by local purchase utilizing appropriated funds.

**Applicability.** These procedures apply to all major subordinate commands, directorates, and staff offices/departments, this headquarters; and to Partners in Excellence per Civilian Personnel Servicing Agreements.

**Suggested Improvements.** The proponent of this regulation is the DOC. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to CDR, USAARMC and Fort Knox, ATTN: ATZK-DC, Fort Knox, KY 40121-5000.

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\*This regulation supersedes USAARMC Reg 715-2, 15 May 1989

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PART 1

FEDERAL ACQUISITION REGULATIONS SYSTEM

1.1 AUTHORITY. This regulation establishes internal Fort Knox guidance for the acquisition of supplies, services, and construction consistent with Army Federal Acquisition Regulation Supplement (AFARS) 1.304(a)(1). This regulation establishes uniform instructions consistent with and supplementary to this regulation.

1.1.1 APPLICABILITY. This regulation is applicable to the United States Army Armor Center Fort Knox, Fort Knox Partners in Excellence, installation activities, and other activities outside Fort Knox which are supported by the Directorate of Contracting at Fort Knox, Kentucky.

1.1.2 ARRANGEMENT. Except for Part 60 and appendixes, the subjects in this regulation have been arranged in parts to correspond as closely as possible to those contained in Federal Acquisition Regulation (FAR), DOD Federal Acquisition Regulation Supplement (DFARS), and AFARS. Part 60 contains information which has not been specifically addressed in FAR, DFARS or AFARS. Appendixes include other data which will be used in conjunction with this regulation.

1.5 ACTIVITIES AUTHORIZED TO SUBMIT PURCHASE REQUESTS. Appendix A contains a list of activities authorized to submit purchase requests to DOC. With some minor exceptions, the centralized logistical concept is utilized whereas only those activities that are responsible for providing the supplies, services, or construction are authorized to submit a purchase request.

1.6 MISSION AND RESPONSIBILITY OF DIRECTORATE OF CONTRACTING (DOC). The DOC's mission is to provide responsible and responsive local purchase support for units and activities at Fort Knox, and for units and activities which are logistically supported by Fort Knox. Award and administration of contracts for supplies, services, and construction are responsibilities of DOC. Only individuals assigned to DOC and appointed as a contracting officer by the Head of Contracting Activity (HCA) (HQ TRADOC); individuals at various on- and off-post locations appointed as an ordering officer by DOC; individuals in various requesting activities designated by a contracting officer to place calls against Blanket Purchase Agreements (BPAs); and individuals designated as a purchasing officer by DOC to use VISA (Government Credit Card) are expressly authorized to execute and administer agreements and orders for supplies, services, and construction. While other individuals are responsible for providing assistance in accomplishing the broad functions of contract administration, only those government agents (contracting officer, ordering officer, BPA designee) who possess express authority may award, agree to, or sign any contract or modification thereto, or in any way obligate the payment of money by the government.

1.6.1 AVAILABILITY OF FUNDS.

a. Except as provided below, each purchase request will have sufficient funds available for the acquisition contemplated, a citation of funds to be charged, and a statement in writing that funds are available. The written statement is not required if funding procedures are automated and a positive accounting trail from the solicitation, contract, purchase order, or delivery order to a consolidated and obligation listing is provided. Also, the funding requirement does not apply to purchase requests for agreements that do not obligate funds such as requirements contracts, basic agreements, basic ordering agreements, and BPAs.

b. Purchase requests for high priority requirements may be submitted before obtaining assurance of fund availability when the initiating and approving authority determines there is a high probability the requirement will not be canceled. This authority is not intended to permit the soliciting of bids subject to the availability of "windfall" or "hoped for" funds, but is restricted to use in those cases where funds are reasonably assured to become available for obligation within the normal 60-day bid acceptance time. In such case, the program director or designee who has been delegated fund certification authority and responsibility must inscribe and sign the following statement on the purchase request:

"This requirement is included or provided for in the installation financial plan for FY\_\_\_. The accounting classification will be \_\_\_\_\_ . This statement is not assurance of fund availability."

No contract shall be awarded nor shall a prospective contractor be notified of a pending award until necessary appropriation has been certified available by the Directorate of Resource Management (DRM).

c. Requirements which cannot be solicited conditioned upon availability of funds may be submitted to this headquarters, ATTN: ATZK-DC, for advance preparation of bidding documents. These requests will indicate when a firm citation is anticipated. The bid documents may be prepared before receipt of a firm fund citation; however, they will not be distributed to bidders until a firm fund citation is received.

d. Each activity with delegated authority to certify availability of funds will furnish the names of designated representatives with specified limitations to DOC by means of a "delegation of authority" memorandum. This memorandum will be maintained in a current status at all times by periodic updating.



e. When funds certified on the purchase request are inadequate to cover the acquisition, award will be withheld until adequate funds are made available. Unless otherwise stated on the purchase request, the following exception to withholding award applies: When stock funds have been cited and the award (obligation) will not exceed funds certified by 25 percent or \$1,000, whichever is less.

f. Each activity budget office forwarding purchase requests to the contracting office should ensure the accounting classifications are properly formatted in the 65 character field as required for entry into the Standard Army Automated Contracting System (SAACONS).

#### 1.6.2 RESPONSIBILITY OF ACQUISITION PERSONNEL TO QUESTION REQUESTS FOR ACQUISITION.

a. Acquisition personnel are charged with the responsibility of using knowledge gained by daily contact with industry, commodities, markets, prices, and through normal processes of acquisition to support the overall Fort Knox mission. This responsibility includes questioning any contemplated acquisition action that appears to be inconsistent with good practices or when in the judgment of the contracting personnel, the government could be better served by a change in the requirements. Acquisition of items questioned will not be made until all matters are resolved by DOC.

b. Questions may include, but are not limited to:

(1) Where items contemplated to be procured require further development and it can be reasonably ascertained that suitable stock items are available which essentially meet the requirements.

(2) Where acquisition data furnished appears to be more or less restrictive than necessary to assure quality items from a product or performance standpoint.

(3) Where sufficient quality assurance data appears to be lacking.

(4) Where quantity, including economic reorder amounts, appears inconsistent with requirement.

(5) Where acquisition data is not adequate to properly identify and describe the item or services required.

(6) Where required delivery or performance date is unrealistic.

### 1.6.3 UNAUTHORIZED COMMITMENTS.

a. Only appointed contracting officers, appointed ordering officers, and individuals designated by a contracting officer to place calls against a BPA, and appointed purchasing officers for VISA, acting within the scope of their authority, may enter into purchase arrangements or contracts on behalf of the government. Action taken by other personnel which results in a commitment to pay for supplies or services from appropriated funds is not binding on the government and is an "unauthorized commitment." Unauthorized commitments are an embarrassment to the Army, work a hardship on vendors, and may result in disciplinary action against the individual(s) involved. Once vendors/contractors find they cannot be paid in the normal way because no contracting document (PO, contract, etc.) exists to cover the items/services they have furnished, they turn to DOC for information on how to receive payment. The vendor is normally advised to submit an invoice to the individual who ordered the supplies or services without the authority to do so. It then becomes that individual's responsibility to take prompt action, under subparagraph b, below, to resolve the unauthorized commitment so the contractor may be paid.

#### b. Ratification:

(1) Ratification of an unauthorized commitment is the primary method for providing relief to contractors who have furnished property or services to the government without formal contractual coverage. Ratification is the act of approving an unauthorized commitment, by an official who has the authority to do so, for the purpose of paying for supplies or services provided to the government as a result of an unauthorized commitment. Unauthorized commitments cannot be ratified if:

(a) They are made to circumvent or evade the procurement statutes and regulations;

(b) There is a genuine doubt concerning a question of law or fact;

(c) The transaction would not otherwise have been valid if made by a properly authorized Contracting Officer; or

(d) The ratification action is not determined to be fair and reasonable as to price by the ratifying official.

(2) To initiate the ratification process, the individuals making the unauthorized commitment shall forward to commander/director documentation concerning the transaction, which shall include:

(a) A statement signed by the individual describing the circumstances, why normal acquisition procedures were not followed, what bona fide government requirement necessitated the commitment, whether any benefit was received by the government, its value, and any other pertinent facts; and

(b) All other relevant documents including orders, invoices, or other documentary evidence of the transaction.

(3) If the commander/director, after investigation of the circumstances, concurs that the commitment should be ratified, the documentation described in paragraph (2) above shall be forwarded to DOC with a funded purchase request with complete purchase description for the proposed ratification and an endorsement by the commander/director that:

(a) Verifies the accuracy and completeness of the documentation;

(b) Describes the measures taken to prevent a recurrence of unauthorized commitments, including a description of any disciplinary action (to be) taken under DOD Directive 5500.7, Joint Ethics Regulation, or other applicable authority.

(4) Upon receipt, DOC will assign the proposed ratification action to a contracting officer for processing, to include:

(a) Reviewing and determining the adequacy of all facts, records, and documents furnished, and for obtaining any additional material required.

(b) Obtaining an opinion from legal counsel as to whether the acquisition is ratifiable or recommending other appropriate disposition.

(c) Stating whether the price involved is considered fair and reasonable.

(d) Determining that sufficient funds are available to pay for the acquisition.

(e) Preparing a summary statement of facts addressing the foregoing to include a recommendation as to whether the transaction should be ratified and stating reasons therein. Advice against ratification should include a recommendation as to other appropriate disposition.

(5) The HCA (HQ TRADOC) is the individual responsible for approving the ratification. The HCA has delegated authority to approve ratification actions in amounts of \$10,000 or less to DOC. The individual responsible for approving the ratification, upon receipt and review of the complete file, may approve the ratification if it is deemed in the best interest of the government, or direct other disposition as appropriate. Unauthorized commitments approved for ratification will be returned to the contracting officer for ratification.

1.6.4 NONRATIFIABLE COMMITMENTS. Cases that are not ratifiable under paragraph 1.6.3 above may be subject to resolution as recommended by the General Accounting Office (GAO) under its claim procedure (4 GAO 5.1), or as authorized by FAR Part 50. Legal advice should be obtained in these cases.

PART 2

DEFINITIONS OF WORDS AND TERMS

2.1 LOCAL PURCHASE. Local purchase is the authorized purchase of supplies, services, and construction by an installation for its own use or the use of an installation or activity logistically supported by it. Local purchase is not limited to the immediate geographical area in which the purchasing installation is located.

2.1.1 CONTRACTING. Contracting means purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources.

2.1.2 CONTRACTING OFFICER. The contracting officer is a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer.

2.1.3 OFFER. Offer means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Offers in response to sealed bids are called "bids" or "sealed bids" and offers in response to negotiated requests for proposal (RFP) are called "proposals."

2.1.4 MAY. May denotes the permissive.

2.1.5 SHALL. Shall denotes the imperative.

PART 3

IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.1 GENERAL. Government business shall be conducted in a manner above reproach. Transactions relating to the expenditure of public funds require the highest degree of public trust and impeccable standards of conduct. As a rule, no government employee may solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan or anything of monetary value from anyone who: (a) has or is seeking to obtain government business with the employee's agency; (b) conducts activities that are regulated by the employee's agency; or (c) has interests that may be substantially affected by the performance or nonperformance of the employee's official duties. Certain limited exceptions are authorized in DOD Directive 5500.7, Joint Ethics Regulation.

3.1.1 STANDARDS OF CONDUCT.

a. The standards of conduct for DA personnel, directly or indirectly involved in acquisition or related activities, are set forth in DOD Directive 5500.7. This regulation is to reviewed at least semiannually by all personnel concerned with any phase of acquisition or related activities. Personnel directly concerned with acquisition are normally assigned to DOC and are involved in all aspects of preparing, awarding, and administering various types of contracts. Personnel in acquisition related activities include, but are not limited to, those who:

(1) Determine requirements and prepare descriptions of supplies or services to be purchased,

(2) Determine technical requirements and prepare specifications and drawings pertinent thereto,

(3) Determine government estimates of cost,

(4) Conduct pre-award surveys,

(5) Are involved in any aspect of contract administration, such as testing, engineering evaluation, quality control, quality assurance, inspection and acceptance, etc.

b. The DOC is the official point of contact for contractors or potential contractors. All requests for acquisition information will be referred to DOC. Unauthorized personnel will not discuss such details as requirements, production schedules, engineering problems, prices, quantities, delivery schedules, or other acquisition related matters with contractors or potential contractors. The practice of unauthorized personnel contacting contractors or potential contractors could result in:

(1) Advance release of acquisition information (while it is DOD policy that maximum information be made available the public, exceptions are: release of information on proposed plans regarding acquisitions, information received in confidence, information referrals or recommendations in connection with any given acquisition, and other acquisition records which are exempt from public disclosure by federal statute or regulation.)

(2) Some contractors having an unfair advantage over others.

(3) Appearance of favoritism being shown certain contractors.

(4) Unfairly raising the expectations of the contractor or creation of the belief that the DA has committed itself.

(5) The government official making the unauthorized contact receiving disciplinary action for violation of regulatory and statutory requirements.

c. The DOC or contracting officers assigned to the DOC staff may designate any officer or civilian official to act as a representative in contacting contractors and potential contractors regarding acquisition-related matters. Such designations will be made on a case-by-case basis and will in no event include authority to execute or agree to any contract or its modification.

3.1.2 REPORTING SUSPECTED VIOLATIONS OF STANDARDS OF CONDUCT. Suspected violations of standards of conduct will be brought to the attention of DOC, who will render a report of suspected violations through proper channels for administrative action.

3.1.3 VENDOR DEMONSTRATION OF PRODUCTS. Personnel of activities desiring vendors to demonstrate their products at Fort Knox shall refer the vendor to DOC for execution of a "Vendor Demonstration Agreement." This procedure is designed to preclude government personnel from accepting, or the appearance of accepting, gratuities, gifts, favors, etc., from potential contractors in violation of the standards of conduct indicated in paragraph 3.1.1 above.

PART 5

PUBLICIZING CONTRACT ACTIONS

5.1 PUBLICIZING PROPOSED ACQUISITION ACTIONS.

a. Acquisition regulations implementing 15 U.S.C. 637(e) and 41 U.S.C. 416 require agencies to furnish proposed contracts actions for publication in the Commerce Business Daily (CBD). A notice of contract action shall be published in the CBD at least 15 days before issuance of a solicitation except when the combined CBD synopsis/solicitation procedure for acquisition of commercial items is used. Except for acquisition of commercial items, agencies shall allow at least a 30-day response time for receipts of bids. In acquisition of commercial items, the contracting office shall establish a response time that shall allow at least 15 days response time from the date the notice is published in the CBD. The contracting office should consider the circumstances of the individual acquisition, such as the complexity, commerciality, availability and urgency, when establishing the response time.

b. Solicitation actions expected to exceed \$10,000 but not exceeding \$25,000 will be published by displaying in a public place, including electronic bulletin board.

5.5 PAID ADVERTISEMENTS IN NEWSPAPERS.

a. The authority to approve the publication of paid advertisements in newspapers is vested by statute by the Secretary of the Army. The Secretary of the Army normally delegates the authority to approve the publication of advertisements, notices, or proposals to HCA (CDR, TRADOC) who, in turn, delegates such authority to installation commanders.

b. DD Form 1535 (Request/Approval for Authority to Advertise) is to be used in obtaining authority to place paid advertisements in newspapers. Each purchase request, which includes a requirement for newspaper advertisement must be accompanied with a copy of the approval.

PART 6

COMPETITION REQUIREMENTS

6.1 POLICY. The Competition in Contracting Act of 1984 (CICA) established "Full and Open Competition" (F&OC) as the policy in Federal Acquisitions. With certain limited exceptions, contracting officers shall promote and provide for F&OC through use of competitive procedures in soliciting offers and awarding government contracts.

6.1.1 COMPETITIVE PROCEDURES. The competitive procedures available for use in satisfying F&OC are sealed bids, competitive proposals, two-step sealed bidding, use of GSA multiple-award schedules and other competitive procedures (i.e., selection of sources for architect/engineer contracts and selection of basic research proposals for award).

6.1.2 APPLICABILITY. The CICA does not apply to small purchase procedures, the 8(a) program, or contracts that are expressly authorized by another statute. However, competition is required in small purchases unless justified by a recommendation for other than F&OC (appendix D).

6.3 POLICY FOR OTHER THAN F&OC. Title 10 U.S.C. 2304(c) authorized the contracting of government requirements without providing for F&OC when permitted by one of the statutory exceptions specified below.

a. 10 U.S.C 2304(c)(1), FAR 6.302-1, only one responsible source. This authority is applicable when the supplies or services are available from only one responsible source and no other type of supplies or services will satisfy the government's requirements.

b. 10 U.S.C. 2304(c)(2), FAR 6.302-2, unusual and compelling urgency. This authority is applicable when the government's need for supplies or services is of such unusual and compelling urgency that the government would be seriously injured if award of a contract was delayed.

c. 10 U.S.C. 2304(c)(3), FAR 6.302-3, industrial mobilization; or experimental, developmental, or research work. This authority is applicable in order to maintain a facility, producer, manufacturer, or other supplies available in case of a national emergency, to achieve industrial mobilization, to establish or maintain an essential engineering, research, or development capability by an educational or other nonprofit institution or a federally-funded research and development center.

d. 10 U.S.C. 2304(c)(4), FAR 6.302-4, international agreement. This authority is applicable when a foreign government reimburses the U.S. Government for the cost of the acquisition when the terms of a treaty or agreement specify or limit the sources to be solicited.

e. 10 U.S.C. 2304(c)(5), FAR 6.302-5, authorized or required by statute. This authority is applicable when a statute expressly authorizes or requires the acquisition be made through another government agency, from a specified source, or is for a brand-name commercial item for authorized resale.



f. 10 U.S.C. 2304(c)(6), FAR 6.302-6, national security. This authority is applicable when disclosure of the government's needs would compromise the national security (e.g., violate security requirements).

g. 10 U.S.C. 2304(c)(7), FAR 6.302-7, public interest. This authority is applicable when the agency head (Secretary of Defense or Secretary of the Army) determines that F&OC is not in the public interest. This authority may be used when none of the other authorities apply.

6.3.1 LIMITATIONS FOR USING OTHER THAN F&OC. Contracts awarded under any of the seven statutory exceptions specified above will be supported by a written justification and approval (J&A). The contents of the written J&A made by the contracting officer is supported by the data submitted by the technical and requirements personnel in the "Recommendation for Other Than Full and Open Competition" included as appendix B to this regulation.

6.3.2 APPROVAL OF THE J&A DOCUMENT. The approval levels for J&A are:

a. Fort Knox Competition Advocate (located in DOC) - for proposed contracts not exceeding \$500,000.

b. TRADOC Special Advocate for Competition - for proposed contracts exceeding \$500,000, but not exceeding \$10,000,000.

c. Army Competition Advocate General - for proposed contracts exceeding \$10,000,000, but not exceeding \$50,000,000.

6.5 COMPETITION ADVOCATES. Competition advocates are designated by the head of each executive agency per Section 20 of the Office of Federal Procurement Policy Act. Competition advocates are responsible for challenging barriers to and promoting F&OC in the acquisition of supplies and services, reviewing the contracting operations, reporting opportunities and actions taken to achieve F&OC, and any condition or action that has the effect of unnecessarily restricting competition.

PART 7

ACQUISITION PLANNING

7.1 ADVANCE CONTRACT PLANNING PROGRAM.

a. The DOC is responsible for establishing and monitoring the installation's Advance Contract Planning Program for annual recurring requirements. The program is designed to suspense identification of recurring requirements and enable timely submission of purchase requests to permit orderly and responsive acquisition support.

b. This program is an installation program, rather than a contracting program, which requires the attention of all commanders and staff officers. Untimely submission of purchase requests for these requirements will jeopardize the continuity of contractual services or supplies, and may adversely impact upon other contracts vital to this installation. Accordingly, DOC will issue "reminder notices" to each requesting activity to advise the date a purchase request must be received. Requesting activities will establish internal suspense systems for each of their requirements and will forward purchase requests for subsequent requirements to be received in DOC by the required date. Purchase requests will be complete in all respects, to include applicable specifications, drawings, and other supporting data.

c. Purchase requests not received in DOC by the required date will not be accepted for acquisition action unless submitted by informal memorandum through the Chief of Staff. The memorandum must explain the cogent reasons for the delay in submitting the purchase request with supporting documentation by the date established in the Contract Planning Program. It must also specify the alternatives available to the activity if acquisition administrative lead-time is not adequate to permit DOC to award a contract by the required date.

d. The following techniques are applicable for annual recurring requirements:

(1) Requirements contracts: Requirements contracts are awarded on the basis of an estimate of those annual recurring requirements for which precise quantities cannot be determined in advance. These contracts are issued without regard to fiscal year (FY) since funds are not obligated at the time of award but are obligated by each delivery order (SF 1449) placed under such contracts during the contract period.

(2) Contracts conditioned upon the availability of funds: This technique is available for operation and maintenance, and continuing services (such as rental, utilities, and items of supply not financed by stock funds) that are funded by annual appropriations, necessary for normal operations, required promptly upon the beginning of a new fiscal year (FY) (1 October), and for which Congress consistently appropriates funds. Solicitations may be issued and contracts awarded before receipt of a firm certification of funds; however, contract performance cannot begin before funds are made available and the contracting officer notifies the contractor in writing to begin contract performance. Before using this technique, consideration should be given to the use of technique in subparagraph (3) below.

(3) Annual contracts for maintenance of tools and facilities: This technique is appropriate for services such as custodial, refuse collection, grass cutting, building and grounds maintenance, security, and fire protection. It is not authorized for services categorized as operational (such as dining facility services) rather than maintenance. Although this type contract may cover any 12-month contract period, without regard to FY, funds for the total amount of the contract are charged to the appropriation current at the time performance is to begin.

(4) For 12-month contracts which coincide with the FY, the requirement for subsequent contract periods must be submitted to DOC NLT 1 May, except for those requirements otherwise listed at appendix C. For annual recurring contracts which cross the FY, the requirement must be submitted not later than 120 days before completion of the current contract, except for those otherwise listed at appendix C. These submission dates also apply to new requirements for 12-month contract periods.

#### 7.1.1 ACQUISITION ADMINISTRATIVE LEAD-TIME.

a. Action will be taken by activities initiating purchase requests to submit their requirements in sufficient time to allow acquisition personnel adequate procurement administrative leadtime to process the transaction and obtain delivery or performance by the date required. Insufficient procurement administrative leadtime may result in the payment of higher prices for the supplies or services being acquired; failure to obtain delivery by the required date; increased administrative costs in processing mistakes in bids, protests, appeals, etc. (which are more likely to occur when adequate time is not allowed) and discourage prospective sources from selling to the military.

b. Acquisition regulations and directives place numerous requirements upon the contracting officer which are mandatory in effecting each acquisition. Since these requirements may vary with each acquisition, the exact amount of lead-time that will be required to effect an individual acquisition cannot be predetermined; however, adequate lead-time can be estimated and, in general, is dependent upon the type and dollar amount of the proposed contract. The chart at appendix D sets forth an estimated acquisition lead-time required for certain types of acquisitions (orders under mandatory contracts; simplified purchase supplies and services; and contracts for supplies, services, and construction) based upon estimated dollar value and the time required for acquisition of annual recurring requirements regardless of dollar value. The lead-times charted do not allow for delivery or performance. To the extent possible, stock levels should be established commensurate with the lead-times charted.

c. When funds which must be obligated by end of FY (30 September) or earlier have been cited on a purchase request and adequate time is not available to provide minimum procurement administrative lead-time established by chart at appendix D, approval to initiate acquisition action must be obtained from DOC. Such purchase requests must be for emergency or urgent requirements necessary for protection of health and life, for accomplishment of assigned mission, to remove essential equipment from deadline status, to prevent a work stoppage, or for other reasons where urgency of requirement can be readily established. If DOC determines award cannot be made in time to obligate funds cited, purchase request will be promptly returned to requesting activity to enable use of funds in other areas.

d. The provisions of most GSA or other contracts require that the contractor be given written advance notice when lease services are to be discontinued. In most instances, advance notice of not less than 30 days is required. Therefore, to enable compliance with advance notice requirements, requesting activities will advise DOC NLT 45 calendar days before discontinuation of such lease. Leased equipment will not be physically moved from one location to another until disposition instructions are provided by DOC.

7.4 LEASE OF EQUIPMENT. There are situations when the government's requirements may be more economically filled by lease rather than by purchase. The decision to lease rather than purchase must be made on an individual case-by-case evaluation of comparative costs and other factors. Purchase requests for lease of equipment must be supported with justification when submitted to DOC. The criteria for justifying lease in lieu of purchase should include the following:

a. The government's requirement is of short duration and purchase would be more costly than lease. Generally, long term lease will be avoided in the absence of compelling circumstances. Specify the length of period equipment is to be leased.

b. The probability that the equipment will become obsolete and that replacement within a short time will be necessary. Leasing merely because future technological advances might make the selected equipment less desirable is not justification to lease.

c. The equipment is special or technical and the lessor will provide the equipment as well as maintenance and repair service at a lower cost than would otherwise be available to the government if the equipment is purchased and maintained by separate contracts.

d. Adequate funds are not available with which to purchase the equipment, but funds are available to enable lease. In such instances, the justification must include a statement as to the action taken to obtain funds enabling purchase in the future and the estimated date such funds may be available.

PART 8

REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.6 ACQUISITION FROM FEDERAL PRISON INDUSTRIES, INC. The government shall purchase required supplies of the classes listed in the Schedule of Products (a copy of the Schedule is maintained on the Internet, web site - [www.unicor.gov](http://www.unicor.gov)), made in Federal Penal and Correctional Institutions.

8.7 ACQUISITION FROM THE WORKSHOPS OF THE BLIND AND OTHER SEVERELY HANDICAPPED. The government shall purchase required supplies or services on the Procurement List (a copy of the list is maintained on the Internet, web site - [www.nib.org/catfront.htm](http://www.nib.org/catfront.htm)), at prices established by the Committee for Purchase from the Blind and other Severely Handicapped from a qualified workshop if they are available within the period required. Purchase exceptions are granted if the workshops cannot provide the supplies or services within the time required or the quantity required cannot be produced or provided economically by the workshops.

8.7.1 LOCAL PURCHASE OF COMMODITY ASSIGNED ITEMS. When a purchase request includes an item which is in a Federal Supply Class that has been assigned by the Deputy Under Secretary of Defense to one of the various military departments (Army, Navy, Air Force), Defense Supply Agency, or GSA for centralized acquisition, the specific purchase exclusion or one-time local purchase authority shall be cited as part of the local purchase authority for requirements estimated to exceed \$2,500. Purchase requests not citing the exclusion or authority will be returned to the requesting activity for their placement of the requirement with appropriate assigned commodity manager.

8.7.1.1 COMMODITY ASSIGNED BASE-LEVEL COMMERCIAL EQUIPMENT (BCE). A purchase request for BCE shall be supported by one of the following:

- a. A certification that the equipment is an approved commercial item currently coded BCE in the Army Master Data File (AMDF);
- b. A type classification exemption obtained per AR 71-13; or
- c. Local purchase authority obtained from the commodity manager.

8.7.1.2 TEST, MEASUREMENT AND DIAGNOSTIC EQUIPMENT (TMDE). A purchase request for TMDE shall include a copy of the approval to purchase by the Central DA TMDE Activity, U.S. Army Maintenance Management Center, per AR 750-43. If the requested item does not fall under AR 750-43, the purchase request shall include a certification that the item is not TMDE and does not require the approval of the Central DA TMDE Activity.

8.7.1.3 OFFICE COPIER EQUIPMENT. A purchase request for office copier equipment shall include a copy of the administrative approval prepared per AR 25-30 as supplemented by TRADOC. If the administrative approval lists only one machine, the purchase request shall be fully supported with a recommendation for other than F&OC.

8.7.1.4 INDUSTRIAL PLANT EQUIPMENT (IPE). A purchase request for IPE shall include a Certificate of Nonavailability, to include certificate number.

8.8 ACQUISITION OF PRINTING AND RELATED SUPPLIES. Generally, all government printing authorized by law is done at the Government Printing Office except when the Joint Committee on Printing specifically approves otherwise. Printing includes printing, binding, blank-book, and microfilm work.

8.11 LEASING OF MOTOR VEHICLES.

a. Purchase requests for leasing of motor vehicles shall be supported by a written statement signed by the head of the activity submitting the request that:

(1) The vehicles requested are of maximum fuel efficiency and minimum body size, engine size, and equipment (if any) necessary to fulfill operational needs, and meet prescribed fuel economy standards;

(2) The requested passenger automobiles (sedans and station wagons) larger than Type IA, IB, or II (small, subcompact, or compact) are essential to the agency's mission;

(3) Internal approvals have been received (provide copies of the approvals); and

(4) GSA has advised that it cannot furnish the requested vehicles.

b. Within funding limitations, vehicles may be hired for periods not to exceed 90 consecutive days without regard to established allowances to satisfy peak loads or unusual or emergency requirements (AR 58-1, Chapter 3).

PART 12

ACQUISITION OF COMMERCIAL ITEMS

12.1 COMMERCIAL ITEM. Commercial item means any item, other than real property, that is of a type customarily used for nongovernmental purposes and that has been sold, leased, or licensed to the general public or has been offered for sale, lease, or license to the general public. Commercial item may also be any item that evolved through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in item to satisfy the delivery requirements under a government solicitation.

12.2 POLICY. The agency shall conduct market research to determine whether commercial items or nondevelopmental items are available that could meet the agency's requirements. The agency shall acquire commercial items or nondevelopmental items when they are available to meet the needs of the agency. The agency shall require prime contractors and subcontractors at all tiers to incorporate, to the maximum extent practicable, commercial items or nondevelopmental items as components of items supplied to the agency.

12.3 PROCEDURES FOR SOLICITATION, EVALUATION AND AWARD. Contracting Officers shall use the policies unique to the acquisition of commercial items in conjunction with policies and procedures for solicitation, evaluation and award prescribed in FAR Part 13, Simplified Acquisition Procedures, FAR Part 14, Sealed Bidding of FAR Part 15, Contracting by Negotiation, as appropriate for the particular acquisition. For acquisition of commercial items exceeding the simplified acquisition threshold but not exceeding \$5,000,000, including options, contracting activities shall employ the simplified procedures authorized to the maximum extent practicable.



PART 13  
SIMPLIFIED ACQUISITION PROCEDURES

13.1 SIMPLIFIED ACQUISITION. Simplified acquisition means the acquisition of supplies, nonpersonal services, and construction in the amount of \$100,000 or less using simplified acquisition. Simplified acquisition procedures are the methods for making purchases using: credit cards, purchase orders, and blanket purchase agreements. Requirements aggregating more than the simplified acquisition dollar limitation shall not be broken down into two or more individual requirements less than the \$100,000 limit merely to permit negotiation under simplified acquisition procedures.

13.2 MICRO-PURCHASE. Micro-purchase means the acquisition of supplies or services (except construction), the aggregate amount of which does not exceed \$2,500, except that in the case of construction, the limit is \$2,000.

13.3 BLANKET PURCHASE AGREEMENTS (BPA). A BPA is a simplified method of filling anticipated repetitive needs for supplies or services by establishing "charge accounts" with qualified sources of supply. The BPAs are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase documents. The BPAs are established by the Contracts Division, DOC, when numerous purchase orders can be avoided through use of this procedure and the firm will agree to a monthly consolidated payment. Calls under BPAs may not exceed \$25,000 by authorized individuals in the Contracts Division and \$2,500 by authorized individuals in requiring activities such as commissaries, hospitals, research laboratories, or isolated off-post locations.

13.4 FAST PAYMENT PROCEDURE. The fast payment procedure allows payment under limited conditions to a contractor before the Government's verification that supplies have been received and accepted. The procedure provides for payment for supplies based on the contractor's submission of an invoice that constitutes a representation that (a) the supplies have been delivered to a point of first receipt by the Government; and (b) the contractor agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase agreements.

13.5 PURCHASE ORDERS (PO). The POs not in excess of \$100,000 are effected by using DD Form 1155 or DD Form 1449 to purchase necessary supplies and services when BPA, or Standard Form 44 procedures are not used. Receiving reports will be completed within the time specified in paragraph 46.4.3.

13.5.1 UNPRICED PURCHASE ORDERS.

a. An unpriced PO is an order for supplies or services, the price of which is not established at the time of issuance of the order. It may be used when all of the following conditions are present:

(1) The estimated dollar value of requirement will not exceed \$100,000;

(2) It is impracticable to obtain pricing in advance of issuance of the purchase order; and

(3) The requirement is for:

(a) Repairs to equipment requiring disassembly to determine the nature and extent of such repairs;

(b) Sole source material for which cost cannot be readily established; or

(c) Supplies or services where prices are known to be competitive but exact prices are not known (e.g., miscellaneous repair parts, maintenance agreements).

b. When a requirement satisfies the conditions above, a purchase request for issuance of an unpriced PO may be submitted. The requirement should be described in as much detail as possible and, in case of equipment, provide a description of the failure. A realistic monetary limitation shall be placed on the purchase request.

13.5.2 SF 44, PURCHASE ORDER - INVOICE - VOUCHER. SF 44 is a pocket-size PO form designed primarily for on-the-spot, over-the-counter purchases of supplies and nonpersonal services while away from the purchasing office or at isolated activities. It is a multipurpose form that can be used as a purchase order, receiving report, invoice, and public voucher. It may be used when all of the following conditions are satisfied:

a. Except for purchases made under unusual and compelling urgency, the amount of the purchase is not over \$2,500;

b. The supplies or nonpersonal services are immediately available;

c. One delivery and one payment will be made; and

d. Its use is determined to be more economical and efficient than use of other small purchase methods.

#### 13.6 GOVERNMENT CREDIT CARDS.

a. The U.S. Government Bankcard is used to only pay for over-the-counter or telephone purchases when supplies or services are immediately available and a single delivery and payment made. It is intended to supplement and simplify established small purchase procedures, and is designed to minimize cost/administrative burden and reduce procurement leadtime.

b. The DOC must issue a letter of authority to the individual cardholder authorizing them to make purchases using the Visa Card. The letter of authority will establish the single purchase and monthly office limits. Before appointment as a cardholder, the individual must receive at least 8 hours of training and orientation covering the credit card program.

c. In all respects, a Government credit card is considered a regular Visa Card. Intentional use of the card for other than official government business will be considered as an attempt to commit fraud against the U.S. Government and would result in immediate cancellation of the card and disciplinary action against the appointed individual, ranging from reprimand to removal.

d. The DOC is responsible for the overall administration of the U.S. Government credit card program.

PART 14  
SEALED BIDDING

14.1 ELEMENTS OF SEALED BIDDING. Sealed bidding is a method of contracting that employs competitive bids, public opening of bids and awards, and involves the following steps:

a. Preparation of an invitation for bids (IFB), describing the government's requirement clearly, accurately, and completely, avoiding unnecessarily restrictive specifications or requirements which might unduly limit the number of bidders. The IFB includes all documents (whether attached or incorporated by reference) furnished prospective bidders for the purpose of bidding.

b. Publicizing the invitation for bids through distribution to prospective bidders, posting in public places, and such other means as may be appropriate in sufficient time to enable prospective bidders to prepare and submit bids before the time and date set for public opening.

c. Submission of bids to be opened at the time and place prescribed in the solicitation for public opening of bids.

d. Evaluation of bids without discussion.

e. Contract award made with reasonable promptness, after bids are publicly opened, to the responsive and responsible bidder whose bid, conforming to the IFB, is most advantageous to the government, considering price and price-related factors included in the solicitation.

14.2 PRICE-RELATED FACTORS. The purchase request must specify any price related factors that should be considered in evaluation of bids. Examples are temporary duty costs to send inspectors or Quality Assurance Evaluator (QAE) to contractor's out of town facilities to inspect supplies or work when bids are submitted freight-on-board (FOB) origin and FOB destination and for mileage costs associated with packing and transporting equipment to a contractor's facility for repair when equipment is to be delivered/shipped by the government and bids will be evaluated for bidders located various distances from the installation.

14.2.1 BIDDING TIME. A bidding time of at least 30 calendar days will be provided in solicitations. The time is inclusive of the issue and opening dates.

14.2.2 DESCRIPTIVE LITERATURE. Except when descriptive literature is required by federal, military, or other specifications, bidders shall not be required to furnish any unless it is needed to determine before award whether the products offered meet the specifications and to establish exactly what the bidder proposes to furnish. Therefore, purchase requests which require descriptive literature of the supplies/equipment being acquired shall specify: what descriptive literature is to be furnished by a bidder; the purpose for which it is required; the extent to which it is required to be considered in evaluation of bids; and the reasons why product acceptability cannot be determined without the submission of descriptive literature.

14.5 TWO-STEP SEALED BIDDING. Two-step bidding is a combination of competitive procedures designed to obtain the benefits of sealed bidding when adequate specifications are not available. Step one consists of the request for submission, evaluation and (if necessary) discussion of a technical proposal. No pricing is involved. Step two involves the submission of sealed priced bids by those who submitted acceptable technical proposals in step one. Bids submitted in step two are evaluated and the award is made to the responsive and responsible bidder submitting the offer most advantageous to the government, price and other price-related factors considered.

PART 15

CONTRACTING BY NEGOTIATION

15.1 NEGOTIATION. Negotiation means contracting through the use of either competitive or other-than-competitive proposals and discussions. This procedure includes the receipt of proposals from offerors, permits bargaining (discussion, persuasion, alteration of initial assumptions and positions, and give-and-take may apply to price, schedule, technical requirements, type of contract, etc.), and usually affords offerors the opportunity to revise their offers before award of a contract.

15.4 DISCLOSURE OF INFORMATION. After receipt of proposals, none of the information in them or concerning the number, identity, or relative standing of offerors shall be made available to the public or to anyone in the government not having a legitimate interest or need-to-know. Some proposals have restricted data that will be used only for evaluation and shall not be disclosed outside the government without the permission of the prospective contractor. Precautions must be exercised by those in the government to preclude unauthorized disclosure of negotiated acquisitions during preacceptance period or restricted data.

15.4.1 SOLICITATIONS FOR INFORMATION AND PLANNING PURPOSES. It is the general policy of DOD to solicit bids, proposals, and quotations only where there is a definite intention to award a contract. When information necessary for planning purposes cannot be obtained from potential sources by more economical and less formal means, a solicitation for information and planning purposes may be justified. If a requesting activity needs to obtain information which is not otherwise obtainable, a purchase request must be submitted to DOC in the same detail as if the government intended to make an award; however, it must be distinctly annotated to specify its purpose and that no award is to be made for the requirement. The request must be supported by a certificate describing the efforts made to obtain the information informally to include the method used (personal contact, telephone calls, letters, etc.), firms/businesses contacted (to include addresses, telephone numbers, name of individuals contacted, etc.), responses received, and the reasons the information can only be obtained by issuance of a solicitation for information and planning purposes. Based on the data in the certificate, the contracting officer must determine in writing that a solicitation for information and planning purposes is justified and obtain approval at a level higher than the contracting officer. If approved, the contracting officer can then issue the solicitation.

15.5 UNSOLICITED PROPOSAL. An unsolicited proposal is a written proposal that is submitted to the government on the initiative of the submitter for the purpose of obtaining a contract and is not in response to a formal or informal request. It is DOD policy to encourage submission of unsolicited proposals which may have innovative or unique methods or approaches to accomplishing their missions from sources outside the government. Upon receipt of an unsolicited proposal, it is to be forwarded to the control officer as follows:

AREA OF INTEREST

LOCATION OF CONTROL OFFICER

Base Operations

DOC

Test, Evaluation, Training or  
Doctrine

TRADOC Contracting Activity  
at Fort Eustis, VA

See appendix E for the steps in processing unsolicited proposals.

15.8 PRICING OF NEGOTIATED ACQUISITIONS.

a. It is DOD policy that all supplies and services be acquired from responsible sources at fair and reasonable prices calculated to result in the lowest overall cost to the government. Efforts to determine fairness and reasonableness of prices increase with dollar value, complexity of requirements, and restrictiveness of competition.

b. An estimate of the proper price level or value of the products or services requested must accompany each purchase request. This estimate must be as realistic as possible and may be based on physical inspection of products and review of items such as drawings; specifications; job process sheets; historical acquisition data; engineering appraisal of the need for labor, materials, tooling, and facilities; scrap and spoilage factors; and preparation of an independent government estimate. The independent government estimate shall:

(1) Contain a statement by the preparing official as to the basis used in compiling the estimate and as to the extent of its reliability;

(2) Be properly marked or classified to prevent unauthorized disclosure of information developed;

(3) Serve as part of basis for evaluating reasonableness of cost and for making awards on a sound basis;

(4) Establish realistic budgeting cost factors to support contract funding requirements;

(5) Provide a factual basis for analysis of proposals by furnishing a cost comparison bench mark; and

(6) Provide, as appropriate, for a breakout between recurring and nonrecurring costs.

c. The complexity of the estimating technique shall be commensurate with anticipated value of the acquisition.

PART 16

TYPES OF CONTRACTS

16.1 GENERAL. A wide selection of contract types is available to the government and contractors in order to provide needed flexibility in acquiring the large variety and volume of supplies and services required. The contract types are grouped into two broad categories: fixed-price contracts and cost-reimbursement contracts. The specific contract types range from firm-fixed-price, in which a contractor has full responsibility for the performance costs and resulting profit (or loss), to cost-plus-fixed-fee, in which the contractor has minimal responsibility for the performance costs and the negotiated fee (profit) is fixed. Firm-fixed-priced contracts are the preferred contracting method; however, cost-reimbursement type contracts are suitable for use when the nature and complexity of the acquisition are such that the costs of performance cannot be estimated with the accuracy necessary without placing an undue risk on the contractor.

16.5 INDEFINITE-DELIVERY CONTRACTS. There are three types of indefinite-delivery contracts: definite-quantity contracts, requirements contracts, and indefinite-quantity contracts. The appropriate type of indefinite-delivery contract may be used when the exact times and/or quantities of future deliveries are not known at the time of contract award.

a. Definite-Quantity Contracts. A definite-quantity contract provides for delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries to be scheduled at designated locations upon order. This type of contract may be used when it can be determined in advance that a definite quantity of supplies or services will be required during the contract period and that the supplies or services are regularly available or will be available after a short lead-time.

b. Requirements Contracts. A requirements contract provides for filling all actual purchase requirements for specific supplies or services during a specified contract period, with deliveries to be scheduled by placing orders with the contractor. This type of contract may be used when the government anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that will be needed during a definite period. Generally, a requirements contract is appropriate for items or services that are commercial products or commercial-type products. Funds are obligated by each delivery order, not by the contract itself.



c. Indefinite-Quantity Contracts. An indefinite-quantity contract provides for an indefinite quantity, within stated limits, of specific supplies or services to be furnished during a fixed period, with deliveries to be scheduled by placing orders with the contractor. An indefinite-quantity contract may be used when the government cannot predetermine, above a specified minimum, the precise quantities of supplies or services that will be required during the contract period and it is inadvisable for the government to commit itself for more than a minimum quantity. This type contract should be used only for items or services that are commercial products or commercial-type products and when a recurring need is anticipated. Funds for other than the stated minimum quantity are obligated by each delivery order, not by the contract itself.

#### 16.6 TIME-AND-MATERIALS AND LABOR-HOURS CONTRACTS.

a. Time-and-Materials Contracts. A time-and-materials contract provides for acquiring supplies or services on the basis of (1) direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit, and (2) materials at cost, including, if appropriate, material handling costs as part of material costs. This type of contract may be used only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.

b. Labor-Hour Contracts. A labor-hour contract is a variation of the time-and materials contract, differing only in that materials are not supplied by the contractor.

PART 17

SPECIAL CONTRACTING METHODS

17.2 OPTIONS. An option is a unilateral right in a contract by which, for a specified time, the government may elect to purchase additional supplies or services called for by the contract, or may extend the term of the contract. Options are not appropriate if:

- a. The supplies or services are readily available on the open market;
- b. The contractor will incur undue risks; e.g., the price or availability of necessary materials or labor is not reasonably foreseeable;
- c. An indefinite quantity or requirements contract is appropriate (except that the contracting officer may use options for extending the term of such contracts);
- d. Market prices for the supplies or services involved are likely to change substantially; or
- e. The option represents known firm requirements for which funds are available unless the basic quantity is a learning or testing quantity and competition for the option is impracticable once the initial contract is awarded.

17.2.1 SPECIFYING OPTIONS. The purchase request must specify the option quantities of supplies or services or the option performance periods that are required. These options, if approved at a level above the contracting officer, will be prepriced and be considered in the evaluation for award.

17.2.2 EXERCISING OPTIONS. Activities must submit a purchase request to DOC requesting that prepriced options in contracts be exercised. Options may be exercised in contracts after receipt of a purchase request only when the contracting officer determines in writing that:

- a. Funds are available;
- b. The requirement covered by the option fulfills an existing government need;
- c. The exercise of the option is the most advantageous method of fulfilling the government's need, price and other factors considered; and
- d. The option was synopsisized in the Commerce Business Daily unless exempted by FAR 5.202.

17.7 EXCHANGE PERSONAL PROPERTY.

a. Exchange property is property not excess to the needs of the owning activity, but eligible for replacement, which is exchanged and applied as whole or part payment toward the acquisition of similar items. Similar items means both the item being acquired and the item being replaced must fall within one single generic category and the item being acquired must be designed and constructed for the same special purpose as the item being replaced.

b. Each purchase request which includes a requirement to be acquired on an exchange basis must be accompanied by a certificate stating that the property is eligible for exchange and complies with all conditions and limitations specified in DODI 4140.51 including a written administrative determination of economic advantage which will indicate:

(1) The anticipated economic advantage to the government resulting from the use of the exchange authority.

(2) That exchange allowances will be applied toward or in partial payment for the items to be acquired.

(3) That if required, the exchange property has been rendered safe of innocuous, or has been demilitarized.

17.7.2 DESCRIBING REQUIREMENTS FOR REPAIR OR REPLACEMENT PARTS.

a. The use of a purchase description is authorized for acquisition of parts for military equipment, whether for repair, replacement, or replenishment of stock. Repair parts must be acquired to assure the requisite safe, dependable, and effective operation of the equipment. When it is feasible to do so without impairing this assurance, repair parts should be acquired on a competitive basis, as in the cases described in subparagraph b, below. When this assurance can be had, only if the parts are acquired from the original manufacturer of the equipment or his supplier, the acquisition should be restricted accordingly, as in the kind of case described in subparagraph c, below.

b. Parts that are fully identified and can be obtained from a number of known sources, and parts for which fully adequate manufacturing data and drawings are available must be acquired on a competitive basis. In general, such parts are of a standard design configuration. They include individual items that are susceptible to separate acquisition, such as resistors, transformers, generators, spark plugs, or other parts having commercial equivalents.

c. Parts not within the scope of subparagraph b, above, generally should be acquired, either directly or indirectly, from sources that have satisfactorily manufactured or furnished such parts in the past, unless fully adequate data, test results, and quality assurance procedures are available to assure the requisite reliability and interchangeability of the parts. In assessing this assurance, the nature and function of the equipment for which the part is needed should be considered. To illustrate, acceptable tolerance for a commercial television part may be far less stringent than those for a comparable military radar part, permitting competitive contracting of the former but not the latter.

d. Purchase requests for parts will include the following:

(1) Stock number. Interchangeability and/or cross-reference data with names of manufacturers; description of items required (name and nomenclature) with part number, model number, and manufacturer's name; if applicable, description of assembly with part number, model number, serial number, and manufacturer's name.

(2) If it has been determined that only parts sources that have satisfactorily manufactured or furnished such parts in the past will ensure the requisite safe, dependable, and effective operation of the equipment, the purchase request shall be accompanied by a signed certificate stating that parts requested by purchase request(s) No. \_\_\_\_\_ are not parts of standard design configuration (parts common), cannot be fully identified by purchase description or specification (manufacturer's drawings or other needed data), and must be obtained from the original manufacturer or his dealer to ensure the requisite safe, dependable, and effective operation of the equipment.

PART 22

APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1 GENERAL. To ensure maximum uniformity in application and implementation of basic labor policies within DA, all contacts, inquiries from or to labor, management or other government agencies relative to work stoppage disputes or other labor relation matters concerning acquisition initiated by DOC, will be made through or by the Director, DOC.

22.1.1 LABOR DISPUTES.

a. All problems arising out of labor relations of government contractors vitally affect acquisition and are an essential part of acquisition responsibility. All personnel will refrain from formal or informal contacts with labor organizations or government agencies in connection with labor matters and will remain impartial in, and refrain from taking a position on the merits of any labor dispute, and will refrain from the conciliation, mediation or arbitration of any such dispute.

b. All labor disputes, work stoppages, or threatened work stoppages affecting contract work being performed on this installation will be promptly reported by telephone to DOC (Post Labor Advisor). The report, to the extent available, will include name of contractor, contracting agency, labor organization, and nature of dispute. The DOC will notify appropriate installation activities and major command labor advisor and take actions deemed appropriate in disposition of the problem.

22.1.2 ENTRY OF LABOR REPRESENTATIVES TO THE INSTALLATION. Requests by representatives of labor organizations to enter the installation for the purpose of conducting union business during working hours, in connection with a contract between the government and a contractor which employs union members, will be referred to DOC. Response to each request will be prepared by DOC for signature of the installation commander after investigation and coordination with Staff Judge Advocate (SJA).

22.10 SERVICE CONTRACT ACT OF 1965.

a. Subject to certain statutory or administrative exemptions, the Service Contract Act of 1965 applies to all federal contracts, the principal purpose of which is to furnish services in the U.S. through the use of service employees. When the contract amount is estimated to exceed \$2,500, a wage determination must be obtained from the Internet, Army Acquisition website for the procurement.

b. Each purchase request for a services requirement shall contain the following information concerning the service employees expected to be employed by the contractor and any subcontractor in performing the contract:

(1) Classes of service employees as identified in the Service Contract Act Directory of Occupations published January 1985 by the U.S. Department of Labor, or occupational titles and job descriptions of service employees which cannot be identified in the Directory;

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(2) The number of service employees in each class; and

(3) The wage rate that would be paid each class if employed by the agency and subject to the wage provisions of 5 U.S.C. 5341 (Wage Board - blue collar) or 5332 (General Schedule - white collar).

PART 23

ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

23.3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA. Activities submitting purchase requests shall submit a hazardous material certification on every requirement forwarded for acquisition regardless of dollar value that will require the delivery of hazardous materials. Negative certifications are required. Certifications shall identify if requirements will result in delivery of hazardous materials or involve exposure to hazardous materials in any manner, e.g., performance of work, use, handling, transportation, inspection, or disposal. Hazardous material is defined in Section 10.1.3, appendix A of Federal Standard No. 313B, Material Safety Data Sheets Preparation and the Submission of, 14 April 1983 (Superseding Federal Standard No. 313A, 4 June 1976). Since the Federal Standard does not conclusively list all hazardous materials, it is the responsibility of technical personnel to identify any material that, in their judgment, meets the definition criteria of hazardous material. Contractors will be required to submit Material Safety Data Sheets (MSDS) on Alternate Form A for any hazardous material delivered to or utilized during performance at this installation.

PART 24

PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

24.1 PROTECTION OF INDIVIDUAL PRIVACY. The Privacy Act of 1974 requires that when an agency (Army in this instance) contracts for the design, development, or operation of a system of records on individuals on behalf of the agency, the agency must apply the requirements of the Act to the contractor and its employees working on the contract. The system of records operated under the contract is deemed to be maintained by the agency and is subject to the Act.

24.1.1 OPERATION OF A SYSTEM OF RECORDS. Activities submitting purchase requests for requirements involving the design, development, or operation of a system of records on individuals to accomplish an agency function shall specifically identify the system of records on individuals and the design, development, or operation of work to be performed.

24.1.2 EXCLUSIONS TO THE ACT. The Act does not apply to records maintained by the contractor on individuals whom the contractor employs and when the agency contracts with a state or private educational organization to provide training, and the records generated on contract students per their attendance (admission forms, grade reports, etc.,) are similar to those maintained on other students and are commingled with their records on other students.

24.2 FREEDOM OF INFORMATION ACT. The Freedom of Information Act specifies, among other things, how agencies shall make their records available upon public request, imposes strict time standards for agency responses, and exempts certain records from public disclosure. Requests under the Act for information or copies of documents relating to contracts, government estimates, acquisition plans, or other acquisition-related data shall be forwarded to DOC for consideration since the request may be acquisition sensitive.



PART 25  
FOREIGN ACQUISITION

25.1 BUY AMERICAN ACT. With certain exceptions, the Buy American Act requires that in the acquisition of supplies and services, only domestic source end products shall be acquired for public use. Before a foreign source end product can be acquired, it must be determined that the item is not available in the U.S., the cost of a domestic source item would be unreasonable, or that there is another reason not to apply the restrictions of the Buy American Act. Each purchase request for a foreign end product must be accompanied by a statement setting forth the following:

a. Description of the item requested, unit quantity, and purpose for which intended.

b. Estimated cost including transportation to destination and any applicable duty.

c. Country or origin and name and address of prospective contractor.

d. Facts clearly establishing the nonavailability of, or feasibility of substituting, domestic source end products, including a listing of performance requirements or characteristics of the foreign end product which are not available in a domestic source end product and which are essential to meet the government's need. These facts shall clearly establish that the performance requirements or characteristics listed are essential to meet government requirements and are not available in domestic source end products. (Individual preference for a particular make or type of equipment is not sufficient justification.)

e. Reasons why the requirement cannot be foregone, the impact on the military operation should the foreign end product not be purchased, and whether the request is for a one-time or recurring requirement.

PART 36

CONSTRUCTION AND ARCHITECT ENGINEER CONTRACTS

36.1 CONSTRUCTION DEFINITION. Construction means construction, alteration or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purpose of this definition, the terms "buildings, structures or other real property" include but are not limited to buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels. Construction does not include the manufacture, production, furnishing, construction, alteration, repair, processing or assembling of vessels, aircraft, or other kinds of personal property.

36.2 DESCRIBING REQUIREMENTS FOR CONSTRUCTION. The technical provisions of construction specifications shall be in sufficient detail so that, when used with the applicable drawings and the specifications and standards incorporated by reference, offers can be prepared on a fair and competitive basis. Materials, equipment, components, or systems shall be described, where possible, by reference to documents generally known to the industry. The documents include federal, military, or nationally-recognized industry, and technical society specifications and standards. The standards which best represent no more and no less than the government's minimum needs will be selected for incorporation by reference into the construction specifications.

36.2.1 GOVERNMENT ESTIMATES.

a. An independent government estimate of construction cost, in as great detail as if the government were competing for the award, will be prepared by the requesting activity from the plans and specifications for each requirement (proposed contract or modification) anticipated to cost \$25,000 or more and which includes detailed plans and specifications. A government estimate for smaller dollar value requirements may be requested by DOC.

b. Access to or disclosure of information concerning the government estimate shall be limited to government personnel whose official duties require knowledge of the estimate. Unclassified government estimates shall be designated "FOR OFFICIAL USE ONLY" and submitted to DOC with the purchase request, if possible, but not later than the date and time set for opening of offers. Each government estimate shall be submitted in a sealed envelope marked to identify the requirement to which it pertains. Classified government estimates shall be handled per applicable security regulations.

c. The designation "FOR OFFICIAL USE ONLY" will be removed after all offers are read and recorded, and the estimate will be read and recorded in the same detail as the offers.

36.2.2 LIQUIDATED DAMAGES (CONSTRUCTION). A liquidated damages clause should be used only when both time of delivery or performance is such an important factor that the Government would be damaged by late completion, and extent or amount of such damage would be difficult or impossible to ascertain or prove. Where different completion dates for separate parts or stages of work are specified, liquidated damages for each separate part or stage of work must be appropriately addressed. The minimum amount of liquidated damages is based on the estimated cost of inspection and superintendence for each day of delay in completion.

36.2.3 STATUTORY COST LIMITATIONS. Contracts for construction cannot be awarded at a price in excess of statutory cost limitations unless such limitations have been waived for a particular requirement. Purchase requests shall identify each requirement subject to a statutory cost limitation and state the applicable cost limitation for each such requirement.

36.2.4 PERFORMANCE EVALUATION OF CONSTRUCTION CONTRACTORS.

a. SF 1420 (Construction Contractor Performance Evaluation Report) is required to be prepared and distributed at time of final acceptance of work when;

(1) The contract amount is \$500,000 or more;

(2) The contract amount is \$10,000 or more and any element of performance was either outstanding or unsatisfactory, or if the contract was terminated for default; or

(3) The contract amount is \$100,000 or more and it was terminated for the convenience of the government.

b. The heading and Part I of the report shall be prepared by DOC in original and one copy and submitted to the responsible technical activity.

c. Part II, Items 9 through 11, 13, and 14, shall be completed by the individual designated to perform on-site inspection of contractor's performance. Item 12 shall be signed by head of requesting technical activity or his designee and the original copy will be returned to DOC for distribution as required by DFARS.

d. Before an overall unsatisfactory report is distributed, the contractor shall be notified by DOC that an unsatisfactory report has been prepared and the facts on which it is based. Any written comments made by the contractor shall be included in the report and mistakes of fact alleged shall be resolved and made a part of the report. Additional coordination with responsible technical activity will be accomplished to resolve questionable areas.

36.9 GENERAL WAGE DETERMINATIONS. General wage determinations issued under the Davis-Bacon Act and related acts can be obtained from the Internet, Army Acquisition website. This information is utilized for all construction contracts which may be awarded by DOC.

36.10 REAL PROPERTY MAINTENANCE, REPAIR, AND CONSTRUCTION. All requests for Real Property Maintenance, Repair, and Construction contracting from agencies other than Directorate of Public Works (DPW) shall:

a. Have administrative approval from DPW for statutory and regulatory limits from Real Property Maintenance, Repair, and Construction activities. Limits are prescribed in AR 420-10 and approval is by DA Form 4283 (Facilities Engineering Work Request) or DD Form 1391 (Major Construction Project Data).

b. Have technical approval from DPW for all contracting actions for Real Property Maintenance, Repair, and Construction.

c. The DOC will return to the requiring activities all purchase requests for Real Property Maintenance, Repair, and Construction which do not have evidence of administrative and technical approval from DPW. Contracting action will commence upon receipt of a complete package, including DPW approval, from the requiring activity.

PART 37  
SERVICE CONTRACTING

37.0 SERVICE CONTRACTING. Service contracting includes contracts for personal and nonpersonal services.

37.1 PERSONAL SERVICES CONTRACT. A personal services contract is characterized by the employer-employee relationship it creates between the government and the contractor's personnel. In effect, it makes contractor personnel appear to be government employees. Personal services contracts cannot be awarded unless specifically authorized by statute and supported by written justification. Statutes authorizing contracts for personal services include, but are not limited to:

- a. 10 U.S.C. 1091 -- Contracts for Direct Health Care Providers;
- b. 10 U.S.C. 4540 -- Architects and Engineers (See FAR Part 36);
- c. 10 U.S.C. 1037 -- Counsel for Military Personnel Before Foreign Tribunals (See AR 27-50);
- d. 10 U.S.C. 828 -- Civilian Court Reporters for Courts Martial (See AR 37-106); and
- e. 10 U.S.C. 3109 -- Experts or Consultants and Stenographic Reporting Services.

37.1.1 NONPERSONAL SERVICES CONTRACT. A nonpersonal services contract is where personnel rendering the services are not subject, either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the government and its employees.

37.1.2 FUNDING AND TERM OF SERVICE CONTRACTS. When contracts for services are funded by annual appropriations, the term of contracts so funded will not extend beyond the end of the FY of the appropriation except when authorized by law. Contracts that are authorized to extend beyond the end of the FY of the annual appropriation used are:

- a. A 1-year contract for maintenance of tools or facilities if authorized under the current DOD Appropriations Act. Examples of such contracts are custodial services, maintenance of family housing, grounds maintenance, refuse collection and disposal, maintenance and repair of elevators, maintenance and/or repair of equipment, and fire protection;
- b. A multi-year service contract;

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c. A 1-year requirements or indefinite quantity contract in which any specified minimum quantities are certain to be ordered in the FY current at the beginning of the contract term; or

d. A contract for the personal services of experts or consultants or a contract for educational services, which cannot feasibly be subdivided for separate performance in each FY.

PART 42  
CONTRACT ADMINISTRATION

42.0 CONTRACT ADMINISTRATION. Contract administration for all acquisitions, including micropurchases, simplified purchases, contracts, and delivery orders is performed by the Contract Administration Division.

PART 43

CONTRACT MODIFICATIONS

43.0 CONTRACT MODIFICATIONS. Contract modifications fall into three categories:

a. Administrative change. A written change that does not affect the substantive rights of the parties (i.e., does not affect price, quality, quantity, delivery or performance elements). Example is a change in the paying office, appropriation data, etc.

b. Change order. A written order, signed by the contracting officer, directing the contractor to make a change that the changes clause authorizes without the contractor's consent.

c. Supplemental agreement. A written agreement to change the contract upon mutual consent of the contractor and contracting officer.

43.1 TYPES OF CONTRACT MODIFICATIONS. Contract modifications are of the following types:

a. Bilateral. A bilateral modification is a contract modification that is signed by the contractor and contracting officer.

b. Unilateral. A unilateral modification is a contract modification that is signed only by the contracting officer.

43.9 NOTIFICATION OF ESSENTIAL CONTRACT CHANGES. If changes are required in specifications; performance work statement; place of delivery or performance; or in any part of the contract, the requiring activity should immediately advise the contracting officer and subsequently confirm that oral notification in writing. The written request for a contract change must specify all changes required (e.g., additional requirements, requirements to be deleted, etc.), a cost impact on making the essential changes (increase or decrease in contract price), and fund cite and certification for the estimated increase/decrease, if expected.

43.9.1 BINDING CHANGES. For contract changes to be binding upon the government, a written modification must be issued by a duly appointed contracting officer with actual authority to make a modification. Contracting officers are agents of the government with limited authority as prescribed by law. Contracting officers' authorities may be further limited by the appointing authority who issues the Contracting Officers' certificates of appointment.



43.9.2 SCOPE OF CHANGES. Changes within the general scope of the contract are deemed permitted as opposed to changes outside the general scope of the contract, which are considered cardinal, and in breach of contract. Cardinal changes are not permitted. The distinction between changes "within" and "outside" the contract may not be well defined. Each change must be evaluated by the contracting officer on a case-by-case basis for a determination of whether it is permissible or cardinal (nonpermissible). Changes that fall neatly into the language of the changes clause are easily determined to be permissive. Questionable changes must be referred by the contracting officer to the SJA for legal review and recommendation. Cardinal changes include, but are not limited to, increases or decreases in the quantity of items to be delivered, increases or decreases in the number of buildings to receive work, changes that alter the nature of items required by the contract, etc. In considering whether a change constitutes a cardinal change, the following factors are considered:

- a. Has there been any significant change in the contract price as a result of the change?
- b. Has the function of the end items of the contract changed?
- c. Has the purpose of the contract been changed?
- d. Have the competitive factors of the original solicitation been changed?
- e. Does the contractor have the capability of performing the work as changed?
- f. The number and timing of the changes.

PART 45  
GOVERNMENT PROPERTY

45.3 PROVIDING GOVERNMENT PROPERTY TO CONTRACTORS. If government property is to be provided to a contractor for use in performance of the contract or for repair, the following information regarding such property is required on the purchase request:

- a. Complete identification of government furnished property including national stock number, nomenclature, brief description, and, if appropriate make (manufacturer), model, and serial number.
- b. Acquisition cost of each item.
- c. Location of government furnished property.
- d. Time for delivery of government furnished property to contractor.
- e. Location for delivery of government furnished property to the contractor.
- f. Statement as to the condition of property and suitability for intended use.
- g. The point of contact for delivering government furnished property.
- h. A copy of the performance work statement will be provided to DRM, ATTN: ATZK-RMD, in order for DRM to verify the property is part of the equipment annex on the contract by TDA and line number.